



Merchant & Gould P.C.
PO Box 2903
Minneapolis, MN 55402-0903

In re Application of	:	
Palmer et al.	:	
US Application No.: 09/937,569	:	
PCT Application No.: PCT/AU00/00252	:	DECISION ON PETITION
International Filing Date: 27 March 2000	:	
Priority Date: 26 March 1999	:	
Attorney Docket No.: 8257.21USWO	:	
For: DISPLAY DEVICE	:	

This decision is in response to the "Request to Withdraw Holding of Abandonment" filed on 4 March 2003, requesting withdrawal of the holding of abandonment, and the alternative petition to revive the application under 37 CFR 1.137(b). For reasons below, the communication has been treated as a petition under 37 CFR 1.182, and the required petition fee charged to Deposit Account No. 13-2725, as authorized in the petition.

BACKGROUND

On 27 March 2000 (Monday), Applicants filed international application PCT/AU00/00252, which claimed priority of an earlier application filed on 26 March 1999. A copy of the international application was communicated from the International Bureau to the USPTO on 5 October 2000. A Demand for International Preliminary Examination was filed on 2 October 2000, prior to 26 October 2000, when the 19th month from the 26 March 1999 priority date would expire. Therefore, the period for entering the national stage is 30 months and ended on 26 September 2001.

On 26 September 2001, Applicants filed a transmittal letter for entry into the national stage in the United States (Form PTO-1390), accompanied by, *inter alia*, the \$500 basic national fee (small entity) required by 35 U.S.C. 371(c)(1) and 37 CFR 1.492(a)(3), and an unexecuted declaration.

On 14 January 2002, a "Notification of Missing Requirements under 37 CFR 371 in the United States Designated/Elected Office (DO/EO/US)" was mailed, stating that an oath or declaration as required by 35 U.S.C. 371(c)(4) was missing, and setting forth an extendable 2-month period for submitting a proper oath or declaration.

On 6 January 2003, a Notice of Abandonment was mailed.

Petition under 37 CFR 1.182

The instant petition states that according to the postcard receipt date-stamped by the USPTO, the executed declaration was received by the USPTO on 12 February 2002, within the 2-month period set forth in the above Notification of Missing Requirements, but that the papers identified an incorrect U.S. application number. The petition requests withdrawal of the holding of abandonment in the international application as to the United States.

Because the papers filed on 12 February 2002 concededly identified the wrong U.S. application number, the present petition has been treated as a petition under 37 CFR 1.182. Also, the Office was able to retrieve from that misidentified U.S. application the correspondence filed on 12 February 2002, including a declaration executed by the inventors named in the instant application. Since the other application identifiers appearing on the communication (e.g., title, inventors, attorney docket number) correspond to that of the correct application, the communication will be treated as filed in the 09/937,569 application.

With regard to sufficiency of the response to the Notification of Missing Requirements, the declaration filed on 12 February 2002, as indicated in the petition, indeed refers to an incorrect application number, 09/937,873, rather than the application number for the instant application, 09/937,569. However, the declaration contains the correct inventorship and priority information, and appears to be a *bona fide* effort to comply with the 14 January 2002 Notification of Missing Requirements. Accordingly, pursuant to 37 CFR 1.135(c), Applicants would be accorded a new time period to correct the defect. A declaration in compliance with 37 CFR 1.497 has in fact been filed on 04 March 2003, and as such, is a timely and proper reply. The holding of abandonment in the international application as to the United States is hereby withdrawn.


Alternative petition under 37 CFR 1.137(b)

Given that the §1.182 petition is **GRANTED**, the alternative §1.137(b) petition is **DISMISSED as moot.**

The application has an international filing date of 27 March 2000 under 35 U.S.C. 363, and a 35 U.S.C. 371 date of 4 March 2003.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.


Boris Milef
PCT Legal Examiner
PCT Legal Office


RC Tang
Petitions Attorney
PCT Legal Office
Telephone: 703-308-1315
Facsimile: 703-308-6459